

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Request from Richard B. Nettler, dated June 8, 1989, on behalf of Richard Myrick, for a Stay of the Board's Order in Application No. 14856 of James G. and Barbara Lanahan Mauro, pursuant to 11 DCMR 3107.2, for a variance from the maximum allowable lot occupancy requirements (Sub-section 403.2), a variance from the minimum side yard requirements (Sub-section 405.9), and a variance to allow an addition to a structure that currently exceeds the allowable percentage of lot occupancy requirements (Sub-section 2001.3) for the proposed construction of a two-story addition to a single-family dwelling in an R-1-B District at premises 1691 32nd Street, N.W., (Square 1281, Lot 9; Tax Lots 831 and 832).

HEARING DATE: September 21, 1988  
FINAL DATE OF ORDER: March 31, 1989

ORDER ON MOTION FOR A STAY

This matter is before the Board on an emergency motion filed by Richard Myrick, a party in opposition, for a stay of the final order of the Board that was entered on May 31, 1989. On June 7, 1989, the Board determined to conduct a further hearing for the sole purpose of allowing the parties to present evidence to address a visit by one Board member to the site of the application. Applicants have submitted a timely opposition to the stay request. The Board has determined that, in the circumstances of this case, it should not attempt to forecast the probability of success on the merits.

The rehearing has been set to cure a procedural error that preceded the Board's decision. If the Board at this point were to undertake to assess the probable result, the remedial procedure could be subject to question. For that reason, the Board has focused its attention on the public interest and the balance of potential injury to the parties.

One party or the other would be injured by an ultimate decision that is at odds with the decision of the Board on the request. If a stay is entered and the application is ultimately approved, applicants will have been delayed by the stay. If a stay is denied, and then the application is denied, Myrick would confront actively greater difficulty in obtaining a return to the current situation. Applicants would also confront a very substantial potential for injury if there is no Stay and the application is ultimately denied.

No affidavit is before the Board about the extent to which construction had proceeded by June 8, 1989, the date on which the motion for a stay was hand delivered to counsel for applicants. Applicant represents, "Building Permit No. B339513 was issued on May 19, 1989 and construction began immediately." Myrick represents that construction had begun at least by the week of June 5, and has not filed a reply that challenges the representation of applicants about the extent of construction. The Board is not persuaded that entry of a stay will cause greater harm than would the denial.

For purposes of deciding the motion, at the special meeting on June 29, 1989, the Board has considered, but did not rely upon, the assertions of applicant about "the inherent dangers of a partially completed structure" and deprivation of applicants' use of their property. These contentions were not substantiated by a persuasive explanation.

On the basis of the extant record, the Board finds that the public interest would suffer if the Board denies the Stay. Applicants could substantially advance, if not complete, construction, and thereby present the District's regulatory officers with a difficult enforcement issue, if the Board should ultimately deny the application. This prospect could reasonably invite the parties to doubt that the Board would be fully prepared to deny the application, even if, after the further hearing, the record were not to support approval of the application. The Board emphasizes that this concern, which is arguably present in any appeal to the Board of the issuance of a building permit, is predicated here on the obligation of the Board to carry out the remedial process with fidelity, in fact and appearance, to the requirements of the District of Columbia Administrative Procedure Act. The Board has determined that it erred procedurally, and that the error must be corrected. Such is not the case when an administrative decision is appealed to the Board, but has not been heard. Here, there can be no presumption, to any extent, of procedural soundness. The stay will evidence the Board's intention to decide the case on the merits, rather than to reach a decision that may appear to have been mandated by the completion of the construction.

Based upon the foregoing, the Motion for a Stay is GRANTED, and the Board hereby ORDERS that the further operation of Order No. 14856 is STAYED pending further hearing and a further order by the Board, and further construction shall be STAYED pending a final decision or other further order by the Board.

VOTE: 4-1 (William F. McIntosh, Charles R. Norris,  
Paula L. Jewell, and Carrie L. Thornhill to  
approved; John G. Parsons, opposed by proxy).

DECISION DATE: June 28, 1989

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
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EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: JUL 6 1989

14856order/BJW38

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14856

As Acting Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated JUL 6 1989, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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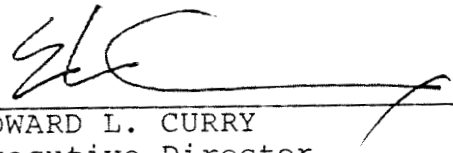
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EDWARD L. CURRY  
Executive Director

DATE: JUL 6 1989